

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

**EMK TRUCKING,  
Plaintiff,**

**VS.**

**HIRSCHBACH MOTOR LINES,  
Defendants.**

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**CIVIL ACTION NO. 21-841**

**NOTICE OF REMOVAL**

Defendant **HIRSCHBACH MOTOR LINES, INC.** (incorrectly referred to in Plaintiff's pleadings as Hirschbach Motor Lines) (hereinafter "Hirschbach") hereby removes to this Court the state court action described below, and files this its Notice of Removal under 28 U.S.C. §1446(a):

**I. INTRODUCTION**

1. Hirschbach has filed its Civil Cover Sheet and has attached the same to this Notice as Exhibit A.

2. On July 23, 2021, Plaintiff EMK Trucking (hereinafter "EMK") and believed by Hirschbach to be EMK Trucking, LLC, a Texas limited liability corporation, initiated a civil state court action in the 20th Judicial District of Milam County, Texas, styled *EMK Trucking v. Hirschbach Motor Lines*, Cause No. 40965. The petition is signed by Eric Kruse, the owner of EMK.<sup>1</sup>

3. In its Original state court Petition, EMK alleges personal slights and a poor response to questions that, in the course of fulfilling its contract with Hirschbach, it posed to Hirschbach.<sup>2</sup> EMK asserts this action by Hirschbach constituted "negligence" and resulted in

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<sup>1</sup> See Ex. B, Plaintiff's Original state court Petition and Citation

<sup>2</sup> *Id.*

mental anguish.<sup>3</sup> EMK seeks recovery of compensatory damages in the amount of \$80,260,000.00.<sup>4</sup>

4. Hirschbach's agent<sup>5</sup> was served with citation and a copy of Plaintiff's Original state court Petition on or about July 27, 2021. This Notice of Removal is thus timely under 28 U.S.C. §1446(b) in that it is filed within thirty (30) days of receipt by Hirschbach of the initial pleading from which it may first be ascertained that the case is one which is or has become removable.

5. Copies of the Citation and Original Petition served on Hirschbach are attached hereto as Exhibit B.<sup>6</sup> These documents constitute the only process, pleadings, or orders received by Hirschbach in this action. A copy of the state court docket sheet is attached hereto as Exhibit C.

6. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332 and is one which may be removed to this Court by Hirschbach pursuant to §1441(a) in that it is an action wherein complete diversity lies and the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00) exclusive of interest and costs.

7. Removal venue exists in the United States District Court for the Western District of Texas, Waco Division because the District Court of Milam County is within the Western District of Texas, Waco Division.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Plaintiff's state court Petition was served on an employee of Defendant who was not a proper agent for service.

<sup>6</sup> 28 U.S.C. §1446(a)

<sup>7</sup> 28 U.S.C. §1441(a)

## II. BASIS FOR REMOVAL

8. Removal is proper because there is complete diversity between the parties and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00).<sup>8</sup>

9. EMK Trucking, LLC is a Texas corporation with its principal place of business in Rockdale, Texas, and thus is a citizen of Texas. Texas Secretary of State filings show as the managing member of EMK only Eric Kruse, who is a Texas citizen and resident. Furthermore, if Eric Kruse is intended to be a plaintiff in his individual capacity,<sup>9</sup> he is a citizen of Texas, domiciled in Milam County, Texas, and has been a Texas citizen at all times relevant to this lawsuit.<sup>10</sup>

10. Hirschbach is not a citizen of the state of Texas, is not incorporated under the laws of Texas, and does not maintain its principal place of business within Texas. Instead, Hirschbach is incorporated under the laws of Iowa and maintains its principal place of business in Iowa. Therefore, Hirschbach is a citizen of Iowa.<sup>11</sup>

11. According to Plaintiff's Original state court Petition, Hirschbach is a Texas Resident.<sup>12</sup> However, this allegation is incorrect. Hirschbach Motor Lines, Inc. is an Iowa Corporation with its principal offices in Dubuque, Iowa. Allegations of Texas citizenship should be disregarded for purposes of affirming diversity jurisdiction.

12. Therefore, since EMK (a Texas citizen) filed suit against Hirschbach (an Iowa resident), the parties are of completely diverse citizenship.<sup>13</sup> Complete diversity exists even if

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<sup>8</sup> 28 U.S.C. §1332(a)

<sup>9</sup> Eric Kruse's status in the case is unclear from the pleadings.

<sup>10</sup> See Ex. B, Plaintiff's Original state court Petition

<sup>11</sup> See 28 U.S.C. §1332(c)

<sup>12</sup> See Ex. B, Plaintiff's Original state court Petition

<sup>13</sup> See 28 U.S.C. §§1332(a), 1332(c), 1441(b)

Eric Krause is also considered to be a plaintiff in this action because he is a Texas resident and citizen.

13. Additionally, and in further support of this Removal Notice, the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00), excluding interest, costs, and attorney's fees.<sup>14</sup> In its Original Petition, EMK contends its damages to be \$80,260,000.00, thus exceeding the \$75,000.00 requirement.<sup>15</sup> Therefore, removal to this Federal Court is proper.

### **III. FILING OF NOTICE WITH STATE COURT**

14. Promptly after filing this Notice of Removal, Hirschbach will give written notice of the removal to pro se Plaintiff and to the clerk of the state court action.

### **IV. PRAYER**

15. WHEREFORE, PREMISES CONSIDERED, Defendant Hirschbach Motor Lines, Inc. respectfully requests that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that it have such other and further relief to which it may show itself justly entitled.

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<sup>14</sup> 28 U.S.C. §1332(a)

<sup>15</sup> See Ex. B, Plaintiff's Original state court Petition

Respectfully submitted,

WRIGHT & GREENHILL, P.C.  
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By: \_\_\_\_\_  
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**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served electronically and/or by certified mail, return receipt requested, on the party listed below, in accordance with the Federal Rules of Civil Procedure on this 12<sup>th</sup> day of August, 2021:

Eric Kruse  
600 Miller St.  
Rockdale, Texas 76567  
[Erickruse7@gmail.com](mailto:Erickruse7@gmail.com)



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David P. Boyce